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assessment for taxes. There was a judgment against the commissioner, and he brings error. Affirmed.

E. M. Fulton, of Bristol, and *W. H. Rouse*, of Wise, for plaintiff in error.

Ino. R. Saunders, Atty. Gen., and *J. D. Hank, Jr.*, Asst. Atty. Gen., for the Commonwealth.

STATE HIGHWAY COMMISSIONER *v.* KREGER.

Sept. 10, 1920.

[105 S. E. 217.]

1. Eminent Domain (§ 198 (1)*)—Question as to Operation of Certain Statutes Held Immaterial.—Since Acts Extra Sess. 1919, c. 31, providing for the condemnation of highways, sufficiently guarantees the compensation provided for by Const. 1902, § 58, consideration of the question whether other statutes sufficiently provide for the raising of the fund from which compensation is to be paid, etc., is not necessary.

2. Eminent Domain (§ 71*)—Provision for Payment of Compensation before Entry Sufficient Compliance with Constitutional Guaranty.—Acts Extra Sess. 1919, c. 31, allowing condemnation of highways by the highway commission, and providing that compensation shall be paid before title shall vest or the commission shall have the right to enter, is, in view of its similarity to other eminent domain statutes, a sufficient protection of the right to compensation guaranteed by Const. 1902, § 58.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 96, 97.]

3. Eminent Domain (§ 71*)—Right to Compensation Not Infringed because Proceedings Might Be Abandoned.—The right to compensation for property taken for public use, guaranteed by Const. 1902, § 58, is not infringed by Acts Extra Sess. 1919, c. 31, providing for condemnation of highways, and declaring that until compensation is paid title shall not vest and entry shall not be made, because the state highway commission might, after instituting proceedings, abandon them, and there is no provision for security that the money shall be forthcoming on assessment of compensation; the contingency that proceedings may be abandoned being a burden which landowners must bear.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 98.]

4. Eminent Domain (§ 71*)—Condemnation Statute Sufficiently Provides for Compensation.—Acts Extra Sess. 1919, c. 31, providing

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

for condemnation by the highway commission, and declaring that payment of compensation shall be made before entry or the vesting of title, is not invalid as failing to sufficiently provide for the compensation guaranteed by Const. 1902 § 58, as the act which allows entry, etc., on the report of the first appraisers, and payment of the amount of the award regardless of confirmation by reference incorporates the general condemnation eminent domain statute (Code 1919, §§ 4370, 4371, 4372, and 4387, Act 1914, c. 306, and Code 1904, § 1105f), which provide for subsequent assessment of compensation; payment of any possible increase being provided for by judgment against the highway commission, etc.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 88, 89.]

5. Constitutional Law (§ 48*)—Presumption Is in Favor of Constitutionality of Statute.—Every presumption is in favor of the constitutionality of a statute, and it will not be held invalid, as denying appeal by implication, unless it is a necessary implication.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 152.]

6. Eminent Domain (§ 252*)—Act Held Not to Deny by Implication Appeal from Assessment of Compensation.—While Acts Extra Sess. 1919, c. 31, providing for condemnation by the highway commission, merely provides for appeal on the question of damages to the circuit court, yet as the question is a judicial one under Const. 1902, § 88 (Code 1919, § 6336), appeal to the Supreme Court of Appeals must be deemed governed by the general law, and not by implication denied.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 429.]

7. Eminent Domain (§ 253 (2)*)—Question Whether Condemnation Is for Public Use Is a Judicial One.—Whether a condemnation is for a public or a private use is a judicial one, and is subject to review by the courts.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 77.]

8. Constitutional Law (§ 46 (1)*)—Question Not Involved Will Not Be Considered.—As the condemnation of a highway under Acts 1919, is undoubtedly for a public use, a property owner whose premises were taken cannot attack the statute on the ground that it did not permit the courts to consider the question whether the use was public; that matter not being involved.

9. Constitutional Law (§ 62*)—Statute Not Invalid Because It Delegated Decision as to Location of Highway to Ministerial Agents.—As the condemnation of a highway is for a public use, Acts Extra Sess. 1919, c. 31, providing for condemnation by the state highway commission, is not invalid because it delegated the question of location to ministerial agents composing the commission and made their

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decision final; the necessity or expediency of the location being a question solely for the Legislature.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 170.]

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 70.]

Appeal from Circuit Court, Washington County.

Petition by the State Highway Commissioner against Kreger for condemnation of an easement for highway. There was an order sustaining the first ground of defense and dismissing the petition, and the commissioner brings error, and defendant assigns as cross-error the overruling of the second ground of defense. Reversed and remanded.

Ino. R. Saunders, Atty. Gen., Henry Roberts, of Bristol, and J. F. Hall, of Richmond, for appellant.

Hutton & Hutton, of Abingdon, for appellee.

RICHARDSON et al. v. GARDNER.

Dec. 1, 1920.

[105 S. E. 225.]

1. Appeal and Error (§ 80 (5)*)—Decree Directing Sale of Land, but Failing to Prescribe Application of Proceeds, Held Interlocutory and Not "Final Decree."—A decree in proceedings to subject realty to claims of creditors, confirming a commissioner's report to determine the order in which the property should be selected, and directing that lands ascertained to be liable should be sold by designated commissioners upon prescribed terms, with instructions to the commissioners to report their proceedings to the court, but failing to direct an application of the proceeds, is an interlocutory and not a final decree; a final decree being one disposing of the whole subject, giving all relief contemplated, providing with reasonable completeness for giving effect to the sentence, and leaving nothing to be done save to superintend ministerially the execution of the decree.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Final Decree or Judgment. For other cases, see 8 Va.-W. Va. Enc. Dig. 191.]

2. Equity (§§ 392, 442*)—Petition Held One to Rehear, and Not for Review.—A petition to enjoin a sale of realty pursuant to a decree ordering sale for the benefit of creditors under certain judgments, on the ground that the judgments were not liens because not properly indexed or docketed, held a petition to rehear, and a bill of review.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.